

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TRACIE LYNN TARINELLI,

Appellant.

NO. 62194-7-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: June 15, 2009

Leach, J. — Tracie Tarinelli appeals her conviction for fourth degree assault, alleging that the superior court exceeded its authority when it imposed a two-year term of probation under RCW 9.92.060. While Tarinelli correctly asserts that the judgment and sentence erroneously refers to RCW 9.92.060, which authorizes a court to impose a probationary term of up to one year, the record shows that this error was clerical. We therefore affirm but remand for correction of the clerical error.

Background

On April 15, 2008, a jury found Tarinelli guilty of fourth degree assault, a gross misdemeanor. At her sentencing on July 16, 2008, the court suspended Tarinelli's sentence and placed her on probation for two years. The court stated, "[W]hat I'm really doing is I'm imposing 365 days in jail [and] I'm suspending all but 90. That

means the remaining days are hanging over your head that can be imposed, if you violate probation. Those days will be suspended for a period of two years.”

This two-year probationary term was recommended in the presentence investigation. The court noted that even though this probationary term would be longer than that which could be imposed if Tarinelli was convicted of a felony, the recommendation was proper in light of community safety concerns: “[T]he conditions that have been recommended here . . . [are] far more onerous than anything she would have gotten for a felony. That doesn’t mean it isn’t necessary for community protection, it’s just that it is an additional punishment, so I think that’s more than adequate.”

The judgment and sentence order contained the following language:

IT IS ADJUDGED that the defendant is guilty of the above crime(s) and that the defendant be sentenced to imprisonment in the Snohomish County Jail for a maximum term of 365 days on Count No. I.

IT IS ORDERED that the execution of 275 days of this sentence is () deferred pursuant to RCW 9.95.210 (X) suspended pursuant to RCW 9.92.060 upon the following conditions:

. . . .

The termination of probation shall be set at 24 months from the date of this order.

Discussion

Tarinelli contends that the court exceeded its authority by imposing a two-year term of probation under RCW 9.92.060. The State responds that the court was authorized to impose a two-year term of probation under RCW 9.95.210 and that the

court's apparent reliance on RCW 9.92.060 is a clerical error.

In Washington, "[t]he power to grant, modify, or revoke probation is statutory; therefore, the court must act within the limits of the statutes."¹ RCW 9.92.060 authorizes a superior court to suspend a misdemeanor sentence. For sentences suspended under this statute, RCW 9.92.064 provides that "the court shall establish a definite termination date for the suspended sentence . . . no later than the time the original sentence would have elapsed." In this case, Tarinelli was convicted of fourth degree assault, a gross misdemeanor.² A gross misdemeanor is punishable by a maximum jail term of one year.³ Thus, under RCW 9.92.060, the court had the authority to impose a probationary term of up to one year.

RCW 9.95.210(1) also authorizes a superior court to suspend a misdemeanor sentence. It states, "In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer." Thus, under RCW 9.95.210, the court had the authority to impose a probationary term of up to two years.

The court's statements show that it intended to suspend Tarinelli's sentence and place her on probation for two years. The judgment and sentence order further reflects this intention since the court checked the box for the preprinted provisions for a

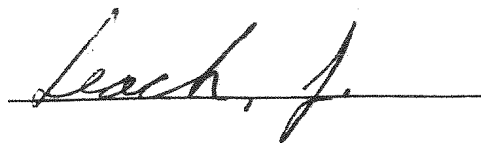
¹ State v. Stanley, 47 Wn. App. 715, 717, 737 P.2d 296 (1987) (citing State ex rel. Schock v. Barnett, 42 Wn.2d 929, 931, 259 P.2d 404 (1953)).

² RCW 9A.36.041(2).

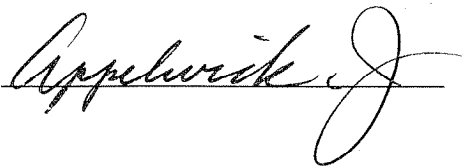
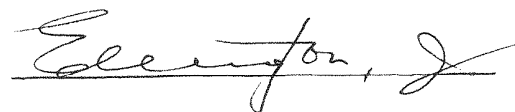
³ RCW 9.92.020.

suspended sentence and a 24-month probationary term. This preprinted language includes the words “pursuant to RCW 9.92.060,” which is a clerical error since, as noted above, RCW 9.92.060 would limit suspensions granted under that statute to 12 months.⁴ Tarinelli’s 24-month probationary term is authorized under RCW 9.95.210. We affirm but remand for correction of this clerical error to reflect the correct authorizing statute.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Eberington, J.", written over a horizontal line.

⁴ Under CrR 7.8(a), “[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.”